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Attorneys for Defendant MENDEZ MEDIA
MARKETING, INC.

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA, SOUTHERN DIVISION

SOCIAL BUTTERFLY WORLD, LLC,

Plaintiff,

v.

MENDEZ MEDIA MARKETING, INC.,

Defendants.

Case No. 2:16-cv-00123-RFB-NJK

**STIPULATION AND [Proposed] ORDER
TO FILE AMENDED ANSWER**

WHEREAS, on January 22, 2016, SOCIAL BUTTERFLY WORLD, LLC. filed a Complaint against MENDEZ MEDIA MARKETING, INC. (the “Complaint”). (ECF 1.)

WHEREAS, on February 22, 2016, MENDEZ MEDIA MARKETING, INC. answered the Complaint (the “Answer”). (ECF 8.)

WHEREAS, on July 1, 2016, the parties entered a Stipulation to Extend Discovery. (ECF 17.)

WHEREAS, on July 5, 2016, the Court granted the parties’ Stipulation to Extend Discovery. ECF 19.

1 WHEREAS, pursuant to the Extended Discovery schedule, the deadline to Amend the
2 Pleadings is September 23, 2016. *See* ECF 19 at 3.

3 WHEREAS, the parties are engaged in discovery and Defendant MENDEZ MEDIA
4 MARKETING, INC. discovered additional facts that allegedly add additional support to existing
5 affirmative defenses and/or additional affirmative defenses as pleaded in its proposed Amended
6 Answer to Complaint. SOCIAL BUTTERFLY WORLD, by entering into this Stipulation, is not
7 agreeing in any way as to the truth or veracity of the allegations, but simply permitting leave to be
8 freely granted in accordance with the spirit of the rules.

9 IT IS HEREBY STIPULATED by and between Plaintiff SOCIAL BUTTERFLY WORLD,
10 LLC., and Defendant MENDEZ MEDIA MARKETING, INC., by and through their undersigned
11 counsel, that Defendant MENDEZ MEDIA MARKETING, INC. be granted leave to amend its
12 Answer to assert additional affirmative defenses and/or further plead facts and authority in support of
13 same against SOCIAL BUTTERFLY WORLD, LLC. A copy of the proposed Amended Answer to
14 Complaint is attached hereto as Exhibit A; a redline version comparing the proposed Amended
15 Answer to the Complaint against the original Answer to Complaint is attached hereto as Exhibit B.

16 DATED this 23rd day of September, 2016

17 McCORMICK, BARSTOW, SHEPPARD,
18 WAYTE & CARRUTH LLP

19 By /s/ Timothy J. Buchanan
20 Timothy J. Buchanan (*Pro Hac Vice*)
21 California Bar No. 100409
22 Shane G. Smith (*Pro Hac Vice*)
23 California Bar No. 272630
24 7647 N Fresno Street
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24 Dylan P. Todd
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27 Las Vegas, Nevada 89113
28 Tel. (702) 949-1100
Attorneys for Defendant MENDEZ MEDIA
MARKETING, INC..

1 DATED this 23rd day of September, 2016

2 GIBBS GIDEN LOCHER TURNER SENET &
3 WITTBRODT LLP

4
5 By /s/ Timothy P. Elson

6 Timothy P. Elson, Esq.
7 Nevada Bar No. 11559
8 1140 North Town Center Drive, Suite 300
9 Las Vegas, Nevada 89144
10 Tel. (702) 836-9800

11 Attorneys for Plaintiff SOCIAL BUTTERFLY
12 WORLD, LLC.

13 **ORDER**

14 IT IS SO ORDERED that pursuant to stipulation of the parties, and pursuant to Federal Rule of
15 Civil Procedure 15(a)(2), that Defendant MENDEZ MEDIA MARKETING, INC. be allowed to file
16 its Amended Answer to Complaint in this case to assert additional affirmative defenses against
17 Plaintiff SOCIAL BUTTERFLY WORLD, LLC.

18 

19 HON. RICHARD F. BOULWARE, II
20 United States District Judge

21 DATED: September 30, 2016.

22 **CERTIFICATE OF SERVICE**

23 I hereby certify that on this 23rd day of September, 2016, a true and correct copy
24 of **STIPULATION AND [Proposed] ORDER TO FILE AMENDED ANSWER** was served via the
25 United States District Court CM/ECF system on all parties or persons requiring notice.

26 By /s/ Carol Aurand

27 Carol Aurand, an Employee of
28 MCCORMICK, BARSTOW, SHEPPARD,
WAYTE & CARRUTH LLP

56695-00000 4106634.1

CASE NO. 2:16-cv-00123-RFB-NJK

Social Butterfly World, LLC v. Mendez Media Marketing, Inc.

EXHIBIT “A”

PROPOSED AMENDED ANSWER TO COMPLAINT; JURY TRIAL DEMANDED

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Attorneys for Defendant MENDEZ MEDIA
MARKETING, INC.

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA, SOUTHERN DIVISION

SOCIAL BUTTERFLY WORLD, LLC, a
Nevada limited-liability company,

Plaintiff,

v.

MENDEZ MEDIA MARKETING, INC., a
California corporation; and DOES 1 through 10
and ROE corporations 1 through 10, inclusive,

Defendants.

Case No. 2:16-cv-00123-RFB-NJK

**AMENDED ANSWER TO COMPLAINT;
JURY TRIAL DEMANDED**

Defendant Mendez Media Marketing, Inc. a California corporation ("MMMI") hereby answers
the complaint in this matter and alleges as follows:

1. Answering paragraph 1, the paragraph alleges no factual matter and therefore requires
no response. In any case, MMMI denies each and every allegation thereof.

2. Answering paragraph 2, the paragraph raises no factual matter but only a legal
contention, and therefore requires no response. In any case, MMMI denies each and every allegation

1 of paragraph 2.

2 3. Answering paragraph 3, MMMI denies each and every allegation thereof.

3 4. Answering paragraph 4, MMMI denies each and every allegation thereof.

4 5. Answering paragraph 5, MMMI admits, upon its information and belief, that plaintiff
5 Social Butterfly World, LLC ("SBW") purports to be a Nevada limited liability company operated for
6 some period of time unknown to MMMI, and that Andrea Collier at certain times held herself out to
7 be affiliated with SBW in some way. Except as expressly so admitted, MMMI denies each and every
8 allegation of paragraph 5.

9 6. Answering paragraph 6, MMMI admits the same.

10 7. Answering paragraph 7, MMMI denies each and every allegation thereof.

11 8. Answering paragraph 8, MMMI admits that at some unknown point SBW, upon
12 MMMI's information and belief, began performing some type of services for Grand Canyon Resort
13 Corporation ("GCRC"), which, according to MMMI's further information and belief, is a tribally
14 chartered corporation owned by the Hualapai Indian Tribe. MMMI further admits, upon its
15 information and belief, that some of SBW's services related to GCRC's recreational business. Except
16 as expressly so admitted, MMMI denies each and other allegation of paragraph 8.

17 9. Answering paragraph 9, MMMI denies the same in their entirety.

18 10. Answering paragraph 10, MMMI denies the same in their entirety.

19 11. Answering paragraph 11, MMMI admits, upon its information and belief, that SBW at
20 various times stated it was performing photographic work for projects related to GCRC. Except as
21 expressly so admitted, MMMI denies each and every other allegation of paragraph 11.

22 12. Answering paragraph 12, MMMI has insufficient information or belief with respect to
23 the accuracy of the allegations thereof, and therefore denies each and every allegation of paragraph 12.

24 13. Answering paragraph 13, MMMI has insufficient information or belief upon which to
25 admit or deny the allegations of this paragraph, and therefore denies each and every allegation of
26 paragraph 13.

27 14. Answering paragraph 14, MMMI admits that GCRC retained MMMI to handle certain
28 aspects of advertising, marketing, and other business needs of GCRC, and that some or all of those

1 activities were beyond the scope of SBW's responsibilities as understood by MMMI based upon
 2 information received. Except as expressly so admitted, MMMI denies each and every other allegation
 3 of paragraph 14.

4 15. Answering paragraph 15, MMMI denies each and every allegation of the same.

5 16. Answering paragraph 16, MMMI denies each and every allegation of the same.

6 17. Answering paragraph 17, MMMI denies each and every allegation of the same.

7 18. Answering paragraph 18, MMMI denies each and every allegation of the same.

8 19. Answering paragraph 19, MMMI denies each and every allegation of the same.

9 20. Answering paragraph 20, MMMI denies each and every allegation of the same.

10 21. Answering paragraph 21, MMMI admits that at some point plaintiff claimed to MMMI
 11 that MMMI was infringing upon alleged rights in certain images plaintiff claimed to have created.
 12 Except as expressly so admitted, MMMI denies each and every allegation of paragraph 21.

13 22. Answering paragraph 22, MMMI admits that at some point plaintiff informed MMMI
 14 that plaintiff purportedly saw advertisements published that contained versions of SBW's claimed
 15 images. Except as expressly so admitted, MMMI denies each and every allegation of paragraph 22.

16 23. Answering paragraph 23, MMMI denies each and every allegation of the same.

17 24. Answering paragraph 24, MMMI denies each and every allegation of the same.

18 25. Answering paragraph 25, MMMI incorporates and restates paragraphs 1 through 24
 19 above as though fully set forth herein.

20 26. Answering paragraph 26, MMMI denies each and every allegation of the same.

21 27. Answering paragraph 27, MMMI admits that it has and for some time has had a
 22 professional relationship with GCRC. Except as expressly so admitted, MMMI denies each and every
 23 other allegation of paragraph 27.

24 28. Answering paragraph 28, MMMI denies each and every allegation of the same.

25 29. Answering paragraph 29, MMMI denies each and every allegation of the same.

26 30. Answering paragraph 30, MMMI denies each and every allegation of the same.

27 31. Answering paragraph 31, MMMI has insufficient information or belief upon which to
 28 admit or deny the allegations of this paragraph, and upon that basis denies each and every allegation

1 of paragraph 31.

2 32. Answering paragraph 32, MMMI admits that in a letter dated January 4, 2016, plaintiff,
3 through its stated counsel, claimed that MMMI was violating certain alleged copyrights held by SBW
4 and requested that MMMI cease and desist their use, further making other statements about remedies
5 available to plaintiff for the alleged actions. The referenced letter speaks for itself, and MMMI denies
6 any attempt in paragraph 32 to characterize or paraphrase the document. Except as expressly so
7 admitted, MMMI denies each and every allegation of paragraph 32.

8 33. Answering paragraph 33, MMMI has no basis upon which to admit or deny plaintiff's
9 information or belief about any subject. MMMI therefore denies each and every other allegation of
10 paragraph 33.

11 34. Answering paragraph 34, MMMI denies each and every allegation of the same.

12 35. Answering paragraph 35, MMMI denies each and every allegation of the same.

13 36. Answering paragraph 36, MMMI denies each and every allegation of the same.

14 37. Answering paragraph 37, MMMI denies each and every allegation of the same.

15 38. Answering paragraph 38, MMMI denies each and every allegation of the same.

16 39. Answering paragraph 39, MMMI incorporates paragraphs 1 through 38 above as
17 though fully set forth herein.

18 40. Answering paragraph 40, MMMI denies each and every allegation of the same.

19 41. Answering paragraph 41, MMMI denies each and every allegation of the same.

20 42. Answering paragraph 42, MMMI denies each and every allegation of the same.

21 43. Answering paragraph 43, MMMI denies each and every allegation of the same.

22 44. Answering paragraph 44, MMMI has no basis upon which to admit or deny plaintiff's
23 information or belief about any subject. MMMI therefore denies each and every other allegation of
24 paragraph 44.

25 45. Answering paragraph 45, MMMI denies each and every allegation of the same.

26 46. Answering paragraph 46, MMMI denies each and every allegation of the same.

27 47. Answering paragraph 47, MMMI denies each and every allegation of the same.

28 48. Answering paragraph 48, MMMI denies each and every allegation of the same.

49. Answering paragraph 49, MMMI denies each and every allegation of the same.

50. Answering the prayer, MMMI denies that plaintiff is entitled to any relief, monetary or otherwise, against MMMI for any conduct at any time.

FIRST AFFIRMATIVE DEFENSE

(Failure To State A Claim)

51. The complaint fails to set forth facts sufficient to state a proper claim for relief against MMMI under any legal theory.

SECOND AFFIRMATIVE DEFENSE

(Consent)

52. Plaintiff consented, expressly or impliedly, to the uses complained of in the claims for relief, and each of them, and therefore is barred from recovering any relief of any nature from MMMI.

THIRD AFFIRMATIVE DEFENSE

(Lack Of Notice)

53. Plaintiff failed to take reasonable, usual steps to protect its purported "rights" in the subject images by providing notice to other parties of plaintiff's claimed rights, including without limitation the failure to register the images as copyrights until long after most if not all of the alleged "infringements" (if any) occurred.

FOURTH AFFIRMATIVE DEFENSE

(Failure To Join Indispensable Party)

54. Plaintiff's complaint, and each purported claim for relief set forth in it, is defective and barred for failure to join and indispensable party, specifically GCRC.

FIFTH AFFIRMATIVE DEFENSE

(Failure To Register)

55. Plaintiff failed to register the purported protected images with the United States Copyright Office as required by law, or did so belatedly. Plaintiff is therefore barred from prosecuting the instant action and is barred from recovering any relief, or certain types of relief, as specified in the Copyright Act.

SIXTH AFFIRMATIVE DEFENSE**(Defective Registration / Fraud on the U.S. Copyright Office)**

56. Upon MMMI's information and belief, Plaintiff defectively registered the subject images as copyrights with the U.S. Copyright Office, or through the omission of certain information, or misinformation, or in some other respect. Upon MMMI's information and belief, each Certificate of Registration asserted by Plaintiff in this case was fraudulently applied for and/or obtained by Plaintiff because Plaintiff never acquired ownership rights in the subject images by the time of registration, yet falsely represented to the Copyright Office in writing that it did own the rights to the subject images at that time. For example, Plaintiff's Certificate of Registration VA 1997545 effective November 20, 2015 lists "Social Butterfly World LLC" as both Author and Copyright Claimant. By way of further example, Plaintiff's Certificate of Registration PA 1984636 effective November 20, 2015 names "Social Butterfly World LLC" as Author, and "Andrea M. Collier" as Copyright Claimant with a transfer statement of "[b]y written agreement." By way of further example, Plaintiff's Certificate of Registration VA 2009584 effective April 28, 2016 lists "Social Butterfly World, LLC, employer for hire of Dennis Watts" as Author of the subject images, and includes a transfer statement of "[b]y written agreement." Upon information and belief, in each case the true author or creator of the subject images listed in VA 1997545, PA 1984636, and VA 2009584 did not transfer ownership to Plaintiff (whether identified as Social Butterfly World LLC, Andrea M. Collier, or otherwise) on or prior to the effective date of those registrations. Upon information and belief, as of the respective effective dates of VA 1997545, PA 1984636, and VA 2009584, Plaintiff had not obtained by contract or any other means the right to claim legal title to the copyrights in the subject images in an application for copyright registration. Further, upon information and belief, Plaintiff did not enter into a valid assignment agreement for the subject images with the true owner of the subject images at any time, and in any case never attempted to enter into a purported assignment agreement covering the subject images until after Plaintiff had obtained its VA 1997545 and PA 1984636 registrations from the U.S. Copyright Office. Therefore, upon information and belief, Plaintiff knowingly made one or more material false statements to and/or fraudulent deposits with the U.S. Copyright Office in order to obtain registrations in the subject images and, in fact, did receive those

1 registrations. To the extent a registration was defective and/or fraudulently obtained, it is ineffectual
2 and bars the instant suit, and each purported claim for relief set forth in it.

3 **SEVENTH AFFIRMATIVE DEFENSE**

4 **(Non-Copyrightable Subject Matter)**

5 57. The subject of the allegedly protected images is unprotectable as copyrighted matter,
6 due to all or some combination of factors bearing on the issues, including without limitation lack of
7 originality, replicating other images, replicating images of government or quasi-government property,
8 replicating images of protected architectural creations of others (e.g., the Grand Canyon Skywalk and
9 related or similar structures). Further, independently, and in the alternative, upon MMMI's
10 information and belief the subject materials are works made for hire and thus are not properly owned
11 by Plaintiff.

12 **EIGHTH AFFIRMATIVE DEFENSE**

13 **(Statute Of Limitations/Laches)**

14 58. To the extent plaintiff seeks remedies of any type for conduct that precedes three years
15 before filing of the complaint, the claims are barred by the applicable statute of limitations, 17 U.S.C.
16 § 507(b), and/or the equitable doctrine of laches. MMMI has been prejudiced by plaintiff's lack of
17 diligence in asserting its purported exclusive rights to the subject images, and by acquiescing without
18 objection to the uses complained of.

19 **NINTH AFFIRMATIVE DEFENSE**

20 **(Waiver And Estoppel)**

21 59. By its conduct, plaintiff has waived, and is estopped from asserting, any purported
22 rights to the subject images by inaction, failure diligently to provide notice of the alleged rights,
23 failure diligently to pursue those rights in the face of known uses, failure to protect its interests against
24 those of GCRC and others, the defective registrations and fraud alleged in paragraph 56 above,
25 without limitation, and other conduct not presently known but which will be asserted by amendment.

26 **TENTH AFFIRMATIVE DEFENSE**

27 **(Plaintiff's Negligence, Lack of Due Care, Or Other Wrongful Conduct)**

28 60. Plaintiff is barred from relief by its own negligent or other wrongful conduct, or lack of

1 due care, in failing to perfect and preserve its alleged rights in the subject images, failure to assert
 2 those rights diligently against other parties, failure to protect its interests against those of GCRC,
 3 failure to provide reasonable notice of its alleged claims to rights, failure to exercise due care to detect
 4 and take action against allegedly unauthorized uses, failure to register the alleged copyrights in a
 5 timely and diligent fashion, and the defective registrations and fraud alleged in paragraph 56 above,
 6 without limitation, among other possible acts or omissions not presently known.

7 **ELEVENTH AFFIRMATIVE DEFENSE**

8 **(Acts Of Third Parties)**

9 61. Plaintiff's harm, if any, for the conduct alleged in the complaint is due to the acts of
 10 third parties not presently named in this action, and for which MMMI has no control or legal
 11 responsibility.

12 **TWELFTH AFFIRMATIVE DEFENSE**

13 **(Bad Faith)**

14 62. Plaintiff's actions in asserting, and failing to assert, its alleged rights in the subject
 15 images constitute bad faith as the claims and assertions are improperly motivated, for reasons having
 16 nothing to do with legitimate assertion of legal or property rights.

17 **THIRTEENTH AFFIRMATIVE DEFENSE**

18 **(No Statutory Damages and/or Attorneys' Fees)**

19 63. Statutory damages and/or attorneys' fees under the Copyright Act, as alleged in the
 20 complaint under the Copyright Act, are unavailable because of the lack of registration with the
 21 Copyright Office of the subject images in a timely fashion, as required by provisions of the Act,
 22 including without limitation 17 U.S.C. § 412 and 17 U.S.C. § 504(c).

23 **FOURTEENTH AFFIRMATIVE DEFENSE**

24 **(Lack of Standing)**

25 64. Plaintiff lacks standing to sue under the Copyright Act as it was not the owner of the
 26 subject images at the time of the alleged infringement, nor did Plaintiff obtain a valid and enforceable
 27 copyright in the subject images prior to filing this lawsuit.

DEMAND FOR JURY TRIAL

65. MMMI demands trial by jury on all issues triable by jury as provided by law.

WHEREFORE, MMMI respectfully requests the following relief:

1. That plaintiff take nothing by way of the complaint, and that the complaint be dismissed with prejudice;

2. That MMMI be awarded all remedies available to it by law, under the Copyright Act or otherwise, as a result of the filing of this action against MMMI;

3. That plaintiff be denied all relief, and any relief, under the complaint, and under each purported claim for relief set forth in it;

4. For costs of suit, including reasonable attorneys' fees as allowed by law; and

5. For any further relief as may be appropriate in the circumstances.

DATED this ____ day of September, 2016

McCORMICK, BARSTOW, SHEPPARD,
WAYTE & CARRUTH LLP

By

Timothy J. Buchanan (*Pro Hac Vice*)
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Shane G. Smith (*Pro Hac Vice*)
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Attorneys for Defendant MENDEZ MEDIA
MARKETING, INC..

CASE NO. 2:16-cv-00123-RFB-NJK

Social Butterfly World, LLC v. Mendez Media Marketing, Inc.

EXHIBIT “B”

REDLINE OF PROPOSED AMENDED ANSWER
TO COMPLAINT; JURY TRIAL DEMANDED

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Attorneys for Defendant MENDEZ MEDIA
MARKETING, INC.

UNITED STATES DISTRICT COURT
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SOCIAL BUTTERFLY WORLD, LLC, a
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Plaintiff,

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MENDEZ MEDIA MARKETING, INC., a
California corporation; and DOES 1 through 10
and ROE corporations 1 through 10, inclusive,

Defendants.

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JURY TRIAL DEMANDED

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the complaint in this matter and alleges as follows:

1. Answering paragraph 1, the paragraph alleges no factual matter and therefore requires
no response. In any case, MMMI denies each and every allegation thereof.

2. Answering paragraph 2, the paragraph raises no factual matter but only a legal
contention, and therefore requires no response. In any case, MMMI denies each and every allegation

1 of paragraph 2.

2 3. Answering paragraph 3, MMMI denies each and every allegation thereof.

3 4. Answering paragraph 4, MMMI denies each and every allegation thereof.

4 5. Answering paragraph 5, MMMI admits, upon its information and belief, that plaintiff
5 Social Butterfly World, LLC ("SBW") purports to be a Nevada limited liability company operated for
6 some period of time unknown to MMMI, and that Andrea Collier at certain times held herself out to
7 be affiliated with SBW in some way. Except as expressly so admitted, MMMI denies each and every
8 allegation of paragraph 5.

9 6. Answering paragraph 6, MMMI admits the same.

10 7. Answering paragraph 7, MMMI denies each and every allegation thereof.

11 8. Answering paragraph 8, MMMI admits that at some unknown point SBW, upon
12 MMMI's information and belief, began performing some type of services for Grand Canyon Resort
13 Corporation ("GCRC"), which, according to MMMI's further information and belief, is a tribally
14 chartered corporation owned by the Hualapai Indian Tribe. MMMI further admits, upon its
15 information and belief, that some of SBW's services related to GCRC's recreational business. Except
16 as expressly so admitted, MMMI denies each and other allegation of paragraph 8.

17 9. Answering paragraph 9, MMMI denies the same in their entirety.

18 10. Answering paragraph 10, MMMI denies the same in their entirety.

19 11. Answering paragraph 11, MMMI admits, upon its information and belief, that SBW at
20 various times stated it was performing photographic work for projects related to GCRC. Except as
21 expressly so admitted, MMMI denies each and every other allegation of paragraph 11.

22 12. Answering paragraph 12, MMMI has insufficient information or belief with respect to
23 the accuracy of the allegations thereof, and therefore denies each and every allegation of paragraph 12.

24 13. Answering paragraph 13, MMMI has insufficient information or belief upon which to
25 admit or deny the allegations of this paragraph, and therefore denies each and every allegation of
26 paragraph 13.

27 14. Answering paragraph 14, MMMI admits that GCRC retained MMMI to handle certain
28 aspects of advertising, marketing, and other business needs of GCRC, and that some or all of those

activities were beyond the scope of SBW's responsibilities as understood by MMMI based upon information received. Except as expressly so admitted, MMMI denies each and every other allegation of paragraph 14.

15. Answering paragraph 15, MMMI denies each and every allegation of the same.

16. Answering paragraph 16, MMMI denies each and every allegation of the same.

17. Answering paragraph 17, MMMI denies each and every allegation of the same.

18. Answering paragraph 18, MMMI denies each and every allegation of the same.

19. Answering paragraph 19, MMMI denies each and every allegation of the same.

20. Answering paragraph 20, MMMI denies each and every allegation of the same.

21. Answering paragraph 21, MMMI admits that at some point plaintiff claimed to MMMI that MMMI was infringing upon alleged rights in certain images plaintiff claimed to have created. Except as expressly so admitted, MMMI denies each and every allegation of paragraph 21.

22. Answering paragraph 22, MMMI admits that at some point plaintiff informed MMMI that plaintiff purportedly saw advertisements published that contained versions of SBW's claimed images. Except as expressly so admitted, MMMI denies each and every allegation of paragraph 22.

23. Answering paragraph 23, MMMI denies each and every allegation of the same.

24. Answering paragraph 24, MMMI denies each and every allegation of the same.

25. Answering paragraph 25, MMMI incorporates and restates paragraphs 1 through 24 above as though fully set forth herein.

26. Answering paragraph 26, MMMI denies each and every allegation of the same.

27. Answering paragraph 27, MMMI admits that it has and for some time has had a professional relationship with GCRC. Except as expressly so admitted, MMMI denies each and every other allegation of paragraph 27.

28. Answering paragraph 28, MMMI denies each and every allegation of the same.

29. Answering paragraph 29, MMMI denies each and every allegation of the same.

30. Answering paragraph 30, MMMI denies each and every allegation of the same.

31. Answering paragraph 31, MMMI has insufficient information or belief upon which to admit or deny the allegations of this paragraph, and upon that basis denies each and every allegation

1 of paragraph 31.

2 32. Answering paragraph 32, MMMI admits that in a letter dated January 4, 2016, plaintiff,
3 through its stated counsel, claimed that MMMI was violating certain alleged copyrights held by SBW
4 and requested that MMMI cease and desist their use, further making other statements about remedies
5 available to plaintiff for the alleged actions. The referenced letter speaks for itself, and MMMI denies
6 any attempt in paragraph 32 to characterize or paraphrase the document. Except as expressly so
7 admitted, MMMI denies each and every allegation of paragraph 32.

8 33. Answering paragraph 33, MMMI has no basis upon which to admit or deny plaintiff's
9 information or belief about any subject. MMMI therefore denies each and every other allegation of
10 paragraph 33.

11 34. Answering paragraph 34, MMMI denies each and every allegation of the same.

12 35. Answering paragraph 35, MMMI denies each and every allegation of the same.

13 36. Answering paragraph 36, MMMI denies each and every allegation of the same.

14 37. Answering paragraph 37, MMMI denies each and every allegation of the same.

15 38. Answering paragraph 38, MMMI denies each and every allegation of the same.

16 39. Answering paragraph 39, MMMI incorporates paragraphs 1 through 38 above as
17 though fully set forth herein.

18 40. Answering paragraph 40, MMMI denies each and every allegation of the same.

19 41. Answering paragraph 41, MMMI denies each and every allegation of the same.

20 42. Answering paragraph 42, MMMI denies each and every allegation of the same.

21 43. Answering paragraph 43, MMMI denies each and every allegation of the same.

22 44. Answering paragraph 44, MMMI has no basis upon which to admit or deny plaintiff's
23 information or belief about any subject. MMMI therefore denies each and every other allegation of
24 paragraph 44.

25 45. Answering paragraph 45, MMMI denies each and every allegation of the same.

26 46. Answering paragraph 46, MMMI denies each and every allegation of the same.

27 47. Answering paragraph 47, MMMI denies each and every allegation of the same.

28 48. Answering paragraph 48, MMMI denies each and every allegation of the same.

49. Answering paragraph 49, MMMI denies each and every allegation of the same.

50. Answering the prayer, MMMI denies that plaintiff is entitled to any relief, monetary or otherwise, against MMMI for any conduct at any time.

FIRST AFFIRMATIVE DEFENSE

(Failure To State A Claim)

51. The complaint fails to set forth facts sufficient to state a proper claim for relief against MMMI under any legal theory.

SECOND AFFIRMATIVE DEFENSE

(Consent)

52. Plaintiff consented, expressly or impliedly, to the uses complained of in the claims for relief, and each of them, and therefore is barred from recovering any relief of any nature from MMMI.

THIRD AFFIRMATIVE DEFENSE

(Lack Of Notice)

53. Plaintiff failed to take reasonable, usual steps to protect its purported "rights" in the subject images by providing notice to other parties of plaintiff's claimed rights, including without limitation the failure to register the images as copyrights until long after most if not all of the alleged "infringements" (if any) occurred.

FOURTH AFFIRMATIVE DEFENSE

(Failure To Join Indispensable Party)

54. Plaintiff's complaint, and each purported claim for relief set forth in it, is defective and barred for failure to join and indispensable party, specifically GCRC.

FIFTH AFFIRMATIVE DEFENSE

(Failure To Register)

55. Plaintiff failed to register the purported protected images with the United States Copyright Office as required by law, or did so belatedly. Plaintiff is therefore barred from prosecuting the instant action and is barred from recovering any relief, or certain types of relief, as specified in the Copyright Act.

SIXTH AFFIRMATIVE DEFENSE

(Defective Registration / Fraud on the U.S. Copyright Office)

~~56. Upon MMMI's information and belief, Plaintiff defectively registered the subject images as copyrights with the U.S. Copyright Office, or through the omission of certain information, or misinformation, or in some other respect. To the extent the registration was defective, it is ineffectual and bars the instant suit, and each purported claim for relief set forth in it.~~

56. Upon MMMI's information and belief, Plaintiff defectively registered the subject images as copyrights with the U.S. Copyright Office, or through the omission of certain information, or misinformation, or in some other respect. Upon MMMI's information and belief, each Certificate of Registration asserted by Plaintiff in this case was fraudulently applied for and/or obtained by Plaintiff because Plaintiff never acquired ownership rights in the subject images by the time of registration, yet falsely represented to the Copyright Office in writing that it did own the rights to the subject images at that time. For example, Plaintiff's Certificate of Registration VA 1997545 effective November 20, 2015 lists "Social Butterfly World LLC" as both Author and Copyright Claimant. By way of further example, Plaintiff's Certificate of Registration PA 1984636 effective November 20, 2015 names "Social Butterfly World LLC" as Author, and "Andrea M. Collier" as Copyright Claimant with a transfer statement of "[b]y written agreement." By way of further example, Plaintiff's Certificate of Registration VA 2009584 effective April 28, 2016 lists "Social Butterfly World, LLC, employer for hire of Dennis Watts" as Author of the subject images, and includes a transfer statement of "[b]y written agreement." Upon information and belief, in each case the true author or creator of the subject images listed in VA 1997545, PA 1984636, and VA 2009584 did not transfer ownership to Plaintiff (whether identified as Social Butterfly World LLC, Andrea M. Collier, or otherwise) on or prior to the effective date of those registrations. Upon information and belief, as of the respective effective dates of VA 1997545, PA 1984636, and VA 2009584, Plaintiff had not obtained by contract or any other means the right to claim legal title to the copyrights in the subject images in an application for copyright registration. Further, upon information and belief, Plaintiff did not enter into a valid assignment agreement for the subject images with the true owner of the subject images at any time, and in any case never attempted to enter into a purported assignment agreement

1 covering the subject images until after Plaintiff had obtained its VA 1997545 and PA 1984636
 2 registrations from the U.S. Copyright Office. Therefore, upon information and belief, Plaintiff
 3 knowingly made one or more material false statements to and/or fraudulent deposits with the U.S.
 4 Copyright Office in order to obtain registrations in the subject images and, in fact, did receive those
 5 registrations. To the extent a registration was defective and/or fraudulently obtained, it is ineffectual
 6 and bars the instant suit, and each purported claim for relief set forth in it.

7 **SEVENTH AFFIRMATIVE DEFENSE**

8 **(Non-Copyrightable Subject Matter)**

9 57. The subject of the allegedly protected images is unprotectable as copyrighted matter,
 10 due to all or some combination of factors bearing on the issues, including without limitation lack of
 11 originality, replicating other images, replicating images of government or quasi-government property,
 12 replicating images of protected architectural creations of others (e.g., the Grand Canyon Skywalk and
 13 related or similar structures). Further, independently, and in the alternative, upon MMMI's
 14 information and belief the subject materials are works made for hire and thus are not properly owned
 15 by Plaintiff.

16 **EIGHTH AFFIRMATIVE DEFENSE**

17 **(Statute Of Limitations/Laches)**

18 58. To the extent plaintiff seeks remedies of any type for conduct that precedes three years
 19 before filing of the complaint, the claims are barred by the applicable statute of limitations, 17 U.S.C.
 20 § 507(b), and/or the equitable doctrine of laches. MMMI has been prejudiced by plaintiff's lack of
 21 diligence in asserting its purported exclusive rights to the subject images, and by acquiescing without
 22 objection to the uses complained of.

23 **NINTH AFFIRMATIVE DEFENSE**

24 **(Waiver And Estoppel)**

25 59. By its conduct, plaintiff has waived, and is estopped from asserting, any purported
 26 rights to the subject images by inaction, failure diligently to provide notice of the alleged rights,
 27 failure diligently to pursue those rights in the face of known uses, failure to protect its interests against
 28 those of GCRC and others, the defective registrations and fraud alleged in paragraph 56 above.

1 without limitation, and other conduct not presently known but which will be asserted by amendment.

2 **TENTH AFFIRMATIVE DEFENSE**

3 **(Plaintiff's Negligence, Lack of Due Care, Or Other Wrongful Conduct)**

4 60. Plaintiff is barred from relief by its own negligent or other wrongful conduct, or lack of
 5 due care, in failing to perfect and preserve its alleged rights in the subject images, failure to assert
 6 those rights diligently against other parties, failure to protect its interests against those of GCRC,
 7 failure to provide reasonable notice of its alleged claims to rights, failure to exercise due care to detect
 8 and take action against allegedly unauthorized uses, and failure to register the alleged copyrights in a
 9 timely and diligent fashion, and the defective registrations and fraud alleged in paragraph 56 above,
 10 without limitation, among other possible acts or omissions not presently known.

11 **ELEVENTH AFFIRMATIVE DEFENSE**

12 **(Acts Of Third Parties)**

13 61. Plaintiff's harm, if any, for the conduct alleged in the complaint is due to the acts of
 14 third parties not presently named in this action, and for which MMMI has no control or legal
 15 responsibility.

16 **TWELFTH AFFIRMATIVE DEFENSE**

17 **(Bad Faith)**

18 62. Plaintiff's actions in asserting, and failing to assert, its alleged rights in the subject
 19 images constitute bad faith as the claims and assertions are improperly motivated, for reasons having
 20 nothing to do with legitimate assertion of legal or property rights.

21 **THIRTEENTH AFFIRMATIVE DEFENSE**

22 **(No Statutory Damages and/or Attorneys' Fees)**

23 63. Statutory damages ~~on~~ and/or attorneys' fees under the Copyright Act, as alleged in the
 24 complaint under the Copyright Act, are unavailable because of the lack of registration with the
 25 Copyright Office of the subject images in a timely fashion, as required by provisions of the Act,
 26 including without limitation 17 U.S.C. § 412 and 17 U.S.C. § 504(c).

27 **FOURTEENTH AFFIRMATIVE DEFENSE**

28 **(Lack of Standing)**

1 64. Plaintiff lacks standing to sue under the Copyright Act as it was not the owner of the
2 subject images at the time of the alleged infringement, nor did Plaintiff obtain a valid and enforceable
3 copyright in the subject images prior to filing this lawsuit.

4
5 **DEMAND FOR JURY TRIAL**

6 ~~64.~~65. MMMI demands trial by jury on all issues triable by jury as provided by law.

7 ##

8 ##

9 WHEREFORE, MMMI respectfully requests the following relief:

10 1. That plaintiff take nothing by way of the complaint, and that the complaint be
11 dismissed with prejudice;

12 2. That MMMI be awarded all remedies available to it by law, under the Copyright Act or
13 otherwise, as a result of the filing of this action against MMMI;

14 3. That plaintiff be denied all relief, and any relief, under the complaint, and under each
15 purported claim for relief set forth in it;

16 4. For costs of suit, including reasonable attorneys' fees as allowed by law; and

17 5. For any further relief as may be appropriate in the circumstances.

1 DATED this ~~22nd~~ _____ day of ~~February~~ September, 2016

2 McCORMICK, BARSTOW, SHEPPARD,
3 WAYTE & CARRUTH LLP

4
5 By ~~//s// Dylan P. Todd~~
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22 Attorneys for Defendant MENDEZ MEDIA
23 MARKETING, INC.;

24 **CERTIFICATE OF SERVICE**

25 I hereby certify that on this _____ day of February, 2016, a true and correct copy of **ANSWER**
26 **TO COMPLAINT**; was served via the United States District Court CM/ECF system on all parties or
27 persons requiring notice.

28 By ~~//s// Kristin Thomas~~
Kristin Thomas, an Employee of
MCCORMICK, BARSTOW, SHEPPARD,
WAYTE & CARRUTH LLP